

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : PRELIMINARY ORDER OF  
: FORFEITURE AS TO  
: SPECIFIC PROPERTY/FINAL  
-v.- : ORDER OF FORFEITURE AS TO  
: DEFENDANT IRVING STITSKY'S  
IRVING STITSKY, : INTEREST IN PROPERTY  
: Defendant. : S1 06 Cr. 357 (KMW)  
: :  
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WHEREAS, on August 31, 2009, IRVING STITSKY (the "defendant"), was charged in a five-count Superseding Indictment, S1 06 Cr. 357 (KMW) (the "Indictment"), with conspiring to commit securities fraud, mail fraud, and wire fraud, in violation of Title 18, United States Code, Section 371 (Count One); securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2 (Counts Two and Three); wire fraud, in violation of Title 18, United States Code, Sections 1343 and 2 (Count Four); and mail fraud, in violation of Title 18, United States Code, Sections 1341 and 2 (Count Five);

WHEREAS, the Indictment included a forfeiture allegation seeking, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any and all property, real and personal, that constitutes or is derived from proceeds traceable to the

commission of the offenses alleged in Counts One through Five of the Indictment, including but not limited to the following:

- a. A sum of money equal to \$18.3 million in United States currency, representing the proceeds obtained as a result of the charged conspiracy and securities fraud offenses alleged in the Indictment, for which the defendants are jointly and severally liable;
- b. All right, title and interest of MARK ALAN SHAPIRO in all that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at 518 Chimney Sweep Hill Road, Glastonbury, Connecticut; and
- c. All right, title and interest of MARK ALAN SHAPIRO, IRVING STITSKY and WILLIAM B. FOSTER, in any and all United States currency, funds or other monetary instruments credited to the following bank accounts:

<u>Account No.</u>	<u>Name in Which Account is Held</u>	<u>Financial Institution</u>
9483623069	VMT	Bank of America
9520214177	FFT I Trust	Bank of America
2000013072531	Cobalt Financial, Inc.	Wachovia Bank
2000012236970	Cobalt Financial, Inc.	Wachovia Bank
2000013072887	CMF Houston Acquisition, LLC	Wachovia Bank
2000012237416	Cobalt Capital Funding, LLC	Wachovia Bank
2000022214092	Cobalt Multfamily Investors I, LLC	Wachovia Bank

WHEREAS, on November 23, 2009, a jury in the Southern District of New York found the defendant guilty of Counts One through Five of the Indictment;

WHEREAS, on July 6, 2010, the defendant was sentenced and ordered to forfeit:

- (1) a sum of \$23,152,235 in United States currency, representing the amount of proceeds obtained as a result of the offenses alleged in Counts One through Five of the Indictment; and
- (2) all of his right, title and interest in property credited to the following bank accounts, and all property traceable thereto (collectively, the "Specific Properties"):

<u>Account No.</u>	<u>Name in Which Account is Held</u>	<u>Financial Institution</u>
9483623069	VMT	Bank of America
9520214177	FFT I Trust	Bank of America
2000013072531	Cobalt Financial, Inc.	Wachovia Bank
2000012236970	Cobalt Financial, Inc.	Wachovia Bank
2000013072887	CMF Houston Acquisition, LLC	Wachovia Bank
2000012237416	Cobalt Capital Funding, LLC	Wachovia Bank
2000022214092	Cobalt Multifamily Investors I, LLC	Wachovia Bank

WHEREAS, the evidence presented at the criminal trial establishes, by a preponderance of the evidence, that the proceeds obtained as a result of defendant's crimes are at least equal to approximately \$23,152,235 in United States currency;

WHEREAS, pursuant to Title 18, United States Code, Section 981(a)(1)(C), Title 28, United States Code, Section 2461(c), Title 21, United States Code, Section 853(g), and Rules 32.2(b)(3), 32.2(b)(6), and 32.2(c) of the Federal Rules of Criminal Procedure, the Government is now entitled, pending any

assertion of third-party claims, to reduce the Specific Properties to its possession and to notify any and all potential purchasers and transferees thereof of its interest therein;

NOW, THEREFORE, IT IS ORDERED, ADJOURNED AND DECREED THAT:

1. As a result of the offenses charged in Counts One through Five of the Indictment, which the defendant was found guilty of, a forfeiture money judgment in the amount of \$23,152,235 in United States currency shall be entered against the defendant.

2. All of the defendant's right, title and interest in the Specific Properties is hereby forfeited to the United States for disposition in accordance with the law, subject to the provisions of Title 21, United States Code, Section 853(n).

3. Upon entry of this Preliminary Order of Forfeiture as to Specific Properties, the United States Marshals Service (or its designee) is authorized to seize the Specific Properties and hold the Specific Properties in its secure custody and control.

4. Pursuant to Rule 32.2(b)(4)(A) of the Federal Rules of Criminal Procedure, this Preliminary Order of Forfeiture as to Specific Properties is final as to the defendant upon entry of this Order, and shall be deemed part of the sentence of the defendant, and shall be included in the judgment of conviction therewith.

5. Pursuant to Title 21, United States Code, Section 853(n)(1), Rule 32.2(b)(6) of the Federal Rules of Criminal

Procedure and Rules G(4) (a) (iv) (C) and G(5) (a) (ii) of the Supplemental Rules for Certain Admiralty or Maritime Claims and Asset Forfeiture Actions, the United States shall publish for at least thirty (30) consecutive days on the government internet site, www.forfeiture.gov, notice of this Preliminary Order of Forfeiture as to Specific Property and notice that any person, other than the defendant in this case, claiming an interest in the Specific Properties must file a petition within sixty (60) days from the first day of publication of the notice on this official government internet site, or no later than thirty-five (35) days from the mailing of actual notice, whichever is earlier.

6. This notice shall state that the petition shall be for a hearing to adjudicate the validity of the petitioner's alleged interest in the Specific Properties, shall be signed by the petitioner under penalty of perjury, and shall set forth the nature and extent of the petitioner's right, title and interest in the Specific Properties and any additional facts supporting the petitioner's claim and the relief sought, pursuant to Title 21, United States Code, Section 853(n).

7. Pursuant to Rule 32.2(b) (6) of the Federal Rules of Criminal Procedure, the Government shall send notice to any person who reasonably appears to be a potential claimant with standing to contest the forfeiture in the ancillary proceeding.

8. Upon adjudication of all third-party interests, this Court will enter a Final Order of Forfeiture with respect to the Specific Properties pursuant to Title 21, United States Code, Section 853(n) and Rule 32.2(c)(2) of the Federal Rules of Criminal Procedure, in which all third-party interests will be addressed.

9. All payments on the outstanding money judgment shall be made by postal money order, bank or certified check, and payable, in this instance to the "United States Marshals Service," and delivered by mail to the United States Attorney's Office, Southern District of New York, Attn: Asset Forfeiture Unit, One St. Andrew's Plaza, New York, New York 10007.

10. The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Federal Rule of Criminal Procedure 32.2(e).

11. Pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, upon entry of this Preliminary Order of Forfeiture as to Specific Property, the United States Attorney's Office is authorized to conduct any discovery needed to identify, locate or dispose of the property, including depositions, interrogatories, requests for production of documents and the issuance of subpoenas, pursuant to Rule 45 of the Federal Rules of Civil Procedure.

12. The Clerk of the Court shall forward three certified copies of this Order to Assistant United States

Attorney Sharon Cohen Levin, One St. Andrew's Plaza, New York  
10007.

Dated: New York, New York  
July \_\_, 2010

SO ORDERED:

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HONORABLE KIMBA M. WOOD  
UNITED STATES DISTRICT JUDGE